

Appl. No. 09/511,795
Amdt. Dated February 3, 2004
Reply to Office action mailed November 3, 2003

REMARKS/ARGUMENTS

The Applicant notes claims 1-23 are pending. The Applicant notes claims 21-23 presently stand objected to as being dependent on a rejected base claim, but Examiner finds they would be allowable if rewritten in independent form. The Applicant has amended base claims 1, 8 and 14 to claim with two or more access tiers disclosed in the present application. The Applicant has added a new independent claim as claim 24. The amendment finds full support in the specification with no new matter being added.

Rejections under 35 USC § 103(a)

The Applicant notes that claims 1, 2, 4-9, 11-16, and 18-20 presently stand rejected by the Examiner under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,982,748 to Yin (hereinafter "Yin") in view of US Patent No. 6,515,964 to Cheung (hereinafter "Cheung"). The Applicant also notes that claims 3, 10 and 17 presently stand rejected under 35 USC § 103(a) as being unpatentable over Yin and Cheung in further view of US Patent No. 5,550,816 to Hardwick (hereinafter "Hardwick").

Yin is concerned with the characteristics of the connection request as criteria for acceptance of the connection request. Yin is directed to controlling access resources and accepts and assigns bandwidth to the connection request as a function of the state of the requested resources and the class of service of the connection request. In addition, Yin discloses in col. 12, line 29-38, a procedure based on a traffic monitoring device to update bandwidth allocations for various service classes in response to the measure traffic flow.

Yin addresses accounting for the removal of connections but not the bases or means of removal. In particular, Yin col. 4, lines 40 – 48 are as follows:

Database 15 stores information regarding existing connections and bandwidth allocations for the various service classes supported. The information stored in database 15 is updated in response to the addition of new connections or the removal of existing connections. In addition to

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controlling admission of connection requests, CAC 10 allocates the total port bandwidth among the various classes of service supported by the network node.

Cheung teaches a network admission control gateway where, in col. 5, lines 13-16, "Once a voice call is admitted to the packet-switched network, all packets associated with the call can be permitted to proceed back and forth through the network as the calling party and called party converse." While the present invention uses the quality of service level of the user to assess continued access given contemporaneously assessed resource load, Cheung discloses a network gateway and means for assessing quality of service of the network but does not teach in the direction of a need or means to disconnect those already connected to the network as a function of quality of service of the connected party and the resources allocated. In col. 10, lines 39-56, of Cheung we find:

claim 2

In another embodiment of the invention, after a first call action is taken to admit a call to the packet-switched network, a second call action can be performed when the performance parameters of the network no longer satisfy the call quality requirements. For example, periodically during the call (e.g., at specific time intervals) the determined call quality requirements are compared to updated, determined performance parameters to ascertain whether the call quality requirements are still satisfied. When the call quality requirements are no longer satisfied, a second call action can reroute the call over another network. Another second call action may be to charge a discounted rate for the call if the network performance parameters do not satisfy the call quality requirements at a point during the call. Alternatively, the second call action may be to charge a discounted rate for the period of the call during which the network performance parameters do not satisfy the call quality requirements.

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The update of the bandwidth allocations for various service classes of Yin is not a rerouting or rate charge/fee reduction of Cheung and neither is the system termination of a connection of the according to the present invention.

The Applicant respectfully submits that in the teachings of the prior art, there is no suggestion to combine the teachings of Yin with Cheung. The enhanced network performance metrics of Cheung that may be applied to Yin are of no moment to the present invention and should not provide a basis for combination in this case. The Applicant respectfully submits that Cheung and Yin have been combined for a benefit in hindsight that does not bear directly on the present invention. Accordingly, the Applicant submits these applications have been improperly combined in this case for purposes of analysis under 35 USC § 103(a). The Applicant respectfully submits that the suggestion to combine cannot require substantial reconstruction or redesign of the prior art. (See *in re Ratti*, 270 F. 2d 810, 123 USPQ 349 (C.C.P.A. 1959). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. That is, the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." (See *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992). In addition, *In re Fritch* adds that:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so." (quoting *ACS Hosp. Systems, Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

The Applicant respectfully asserts Cheung does not suggest a need to characterize the requested connections for purposes of admission as in Yin and Yin does not suggest a need for quality of service metrics of the kind disclosed in Cheung. The Applicant respectfully submits there is no apparent disadvantage to either system. Motivation to combine requires

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desirability, not merely trade-off. (See *Winner Int'l Royalty Corp. v Wang*, 202 F.3d 1340, 53 USPQ2d 1580 (Fed. Cir.), *cert. denied*, 530 U.S. 1238 (2000)). "[O]ne of ordinary skill in the art would not have reasonably elected trading the benefit of security for that of convenience. Trade-offs often concern what is feasible, not what is, on balance, desirable. Motivation to combine requires the latter. . . . The fact that the motivating benefit comes at the expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another."

The currently amended claim 1 reads:

In a multi-service network switch, a method for providing tiered access to system resources, the method comprising:
maintaining in a data store of the network switch an access level of [[three]] two or more access tiers for a characteristic associated with a connection request, the access level for each of the access tiers being associated with an access threshold;
receiving an incoming connection request;
determining the characteristic of the incoming connection request;
retrieving the access level for the determined characteristic from the data store;
assigning the retrieved access level to the incoming connection request;
identifying the resource request by the incoming connection request;
determining an amount of current usage for the identified resource; and
allocating the identified resource to the incoming connection request if the amount of current usage is less than the access threshold associated with the assigned level.

Whether Yin and Cheung are taken collectively or separately, neither of these pieces of cited art teach or suggest steps of claim 1 and its apparatus analogs as follows: "maintaining in a data store of the network switch an access level of two or more access tiers for a characteristic associated with a connection request, the access level for each of the access

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tiers being associated with an access threshold;" "retrieving the access level for the determined characteristic from the data store;" and "assigning the retrieved access level to the incoming connection request." In addition, Yin and Cheung fail to teach or suggest, either collectively or separately, the steps of claim 1 and its apparatus analogs as follows: "determining the characteristic of the incoming connection request."

The present invention as claimed in independent claims 1, 8 and 14 remains unobvious and patentably distinct over cited art whether taken separately or in combination. The present invention as claimed in independent claims 1, 8 and 14 remains unobvious and patentably distinct over Yin in that Yin does not have, and does not suggest steps or means of, for example, storing, retrieving and assigning access levels for the incoming connection request. Taken separately, the present invention as claimed remains unobvious and patentably distinct over Cheung in that Cheung does not have, and does not suggest steps or means of, for example, determining the characteristics of the incoming connection request and then storing, retrieving and assigning access levels for connection request.

The original claims 2 reads:

The method of claim 1 further comprising:

terminating an established connection based on its access level; and
deallocating the resource previously allocated to the terminated connection.

The Applicant respectfully submits that that Yin's removal of the existing connections is effected by the volitional act of the user associated with the existing connection as Yin discloses no means by which this removal is accomplished, or why this removal is desired or necessary. Moreover, the Applicant respectfully submits that Yin does not does not disclose the terminating of a connection based on the state of the allocated resources and a characteristic of the existing connection.

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A new claim 24 is added where a further limitation to a base method claim has the step of "terminating an established connection based on its access level if the amount of current usage is greater than the access threshold associated with the assigned level."

Applicant submits by these above amendment to the claims and preceding arguments, this Amendment is fully responsive to the Examiner's rejections under 35 USC § 103(a). Applicant also respectfully submits that the remaining dependent claims 2-7, 9-13, and 15-20 each add further clarification to their respective base claims and are patentably distinct over the cited art and are, by this Amendment, in a condition for allowance.

In view of the above amendments and remarks, consideration and favorable action on claims 1-24 are respectfully requested. Accordingly, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Should any question remain in view of his communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved.

With the addition of a new independent claim, a fee of \$86 is required. Authorization is hereby given to charge any additional fees, and credit any overcharges pertaining to the prosecution of this matter to Deposit Account No. 02-3979.

Respectfully submitted,



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